

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

THE HALE FOUNDATION, INC.,

Petitioner and Plaintiff,

v.

AUGUSTA-RICHMOND COUNTY,
GEORGIA, MAYOR HARDIE DAVIS, JR.
and COMMISSIONER WILLIAM FENNOY,
DENNIS WILLIAMS, MARY DAVIS,
SAMMIE SIAS, BOOBY WILLIAMS BEN
HASAN, SEAN FRANTOM, BRANDON
GARRETT, MARION WILLIAMS, and
JOHN CLARKE Individually and in their
Official Capacities as Members of the
Augusta Richmond County Commission Of
Commissioners,

Respondents in Certiorari and
Defendants.

CIVIL ACTION FILE
NO.

NOTICE OF REMOVAL

COME NOW defendants Augusta-Richmond County, Georgia, Mayor Hardie Davis, Jr., and Commissioners William Fennoy, Dennis Williams, Mary Davis, Sammie Sias, Bobby Williams, Ben Hasan, Sean Frantom, Brandon Garrett, Marion Williams, and John Clarke individually and in their official capacities as members of the Augusta-Richmond County Commission of Commissioners (collectively, “defendants”), and pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, file this Notice of Removal within the time prescribed by law, and respectfully show the Court as follows:

1.

On or about September 17, 2020, plaintiff The Hale Foundation, Inc. filed its Appeal and Petition for Writ of Certiorari, and Verified Complaint against defendants in the Superior Court of Richmond County, Georgia. A copy of the complaint and summons were served upon defendants. The complaint is attached hereto as Exhibit “A.”

2.

On or about January 22, 2021, plaintiff filed its Amended Petition for Writ of Certiorari, and Complaint against defendants in the Superior Court of Richmond County, Georgia. A copy of the amended complaint and summons were served upon defendants. The amended complaint is attached hereto as Exhibit “B.”

3.

All other process, pleadings, motions, and orders filed in this matter are attached hereto as Exhibit “C.”

4.

This Notice of Removal is filed within 30 days of defendants’ receipt of plaintiff’s amended complaint, from which it can be ascertained that the case has become removable. Plaintiff’s original complaint did not contain any federal claims that would have allowed for removal.

5.

Plaintiff’s amended complaint alleges violations of the United States Constitution and federal law, including: “the Just Compensation Clause of the Fifth Amended and Due Process Clause of the Fourteenth Amendment to the Constitution of the United States” (Ex. B., ¶ 59) “the

Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States” (Ex. B., ¶ 60) and “the Fair Housing Act, 42 U.S.C. § 3601 (“FHA”), the Americans with Disabilities Act, 42 U.S.C. § 12102 (“ADA”), the Rehabilitation Act, 29 U.S.C. § 791, the Fifth and Fourteenth Amendments to the United States Constitution.” (*Id.* ¶ 74.) In addition, plaintiff alleges state law and constitutional claims against defendants.

6.

This action is a civil action of which the Court has original jurisdiction under 28 U.S.C. § 1331.

7.

Defendants may remove this action to this Court pursuant to 28 U.S.C. § 1441 because plaintiff alleges the action arises under the Fifth and Fourteenth Amendments to the United States Constitution, and federal statutes as found under the FHA, ADA, and RA.

8.

This Court has supplemental jurisdiction over plaintiff’s state law claims because they arise out of the same transaction or occurrence as plaintiff’s federal law claims such that they form part of the same case or controversy. 28 U.S.C. § 1367(a).

9.

Pursuant to 28 U.S.C. § 90(b)(5), the United States District Court for the Southern District of Georgia, Augusta Division, is the district court having jurisdiction over the geographical area where the state court action is pending. Pursuant to 28 U.S.C. § 1446(b)(3), defendants are entitled to remove this action from the Superior Court of Richmond County to this Court.

10.

Although Augusta-Richmond County, Georgia, Mayor Hardie Davis, Jr., and Commissioners William Fennoy, Dennis Williams, Mary Davis, Sammie Sias, Bobby Williams, Ben Hasan, Sean Frantom, Brandon Garrett, Marion Williams, and John Clarke individually and in their official capacities as members of the Augusta-Richmond County Commission of Commissioners, as respondents in certiorari, have fulfilled their statutory obligations to file the record and respond and answer to plaintiff's petition for writ of certiorari and verified complaint, to the extent they are deemed necessary party defendants in this removal, their counsel as respondents in certiorari, Randolph Frails, has consented to this removal. Therefore, all defendants have consented to this removal.

10.

Defendants have provided written notice of its filing of this Notice of Removal to plaintiff and the Clerk of Court for the Superior Court of Richmond County, a copy of which is attached hereto as Exhibit "D."

WHEREFORE, defendants respectfully request that this Court assume full jurisdiction of the controversy now pending between plaintiff and defendants in the Superior Court of Richmond County as provided by law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically submitted the foregoing NOTICE OF REMOVAL to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF system participants:

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This 3rd day of February, 2021.

/s/ Dana K. Maine

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